

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 671**

Introduced by Wickersham, 49

Read first time January 20, 1999

Committee: Natural Resources

A BILL

- 1 FOR AN ACT relating to appropriation of water; to amend sections
- 2 46-122 and 46-229, Reissue Revised Statutes of Nebraska;
- 3 to adopt the Water Rights Leasing Act; to harmonize
- 4 provisions; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1           Section 1.   Sections 1 to 13 of this act shall be known  
2   and may be cited as the Water Rights Leasing Act.

3           Sec. 2.   For purposes of the Water Rights Leasing Act:

4           (1) Department means the Department of Water Resources;

5           (2) Director means the Director of Water Resources; and

6           (3) Irrigation district means a district organized under  
7   Chapter 46, article 1, or Chapter 70, article 6.

8           Sec. 3.   An irrigation district may lease water rights to  
9   any person, entity, or political subdivision, subject to the  
10   conditions set out in the Water Rights Leasing Act.

11          Sec. 4.   An irrigation district seeking to lease a water  
12   right to any person, entity, or political subdivision shall file an  
13   application with the department on a form approved by the  
14   department. The application shall contain the name of the  
15   district, the name and address of the proposed lessee, the permit  
16   number and priority date of the water right proposed to be leased,  
17   the name and address of the owner of and the legal description of  
18   the land to which the water right is attached, the legal  
19   description of the land or stream segment to which the water right  
20   is to be transferred, the current use, the proposed use, and such  
21   other information as the director determines is necessary. The  
22   application shall be accompanied by written consent of the owner of  
23   the land from which the water right is to be transferred and a copy  
24   of a resolution adopted by a majority of the members of the board  
25   of the district authorizing the application.

26          Sec. 5.   Upon receipt of an application filed under  
27   section 4 of this act, the director shall cause a notice of such  
28   application to be published at the applicant's expense at least

1 once a week for three weeks in at least one newspaper of general  
2 circulation in the county containing the land to which the water  
3 right is attached and in a newspaper of general circulation in  
4 Nebraska. Such notice shall contain a description of the water  
5 right, the number assigned such permit in the records of the  
6 department, the priority date, a description of the land to which  
7 such water right is proposed to be transferred, and any other  
8 relevant information. The notice shall state that any person may  
9 in writing object to and request a hearing on the application at  
10 any time prior to the expiration of two weeks after the date of  
11 final publication.

12           Sec. 6. The department may hold a hearing on an  
13 application filed under section 4 of this act on its own motion and  
14 shall hold a hearing if requested by any person. Any hearing held  
15 pursuant to this section shall be conducted in accordance with  
16 sections 46-209 and 46-210.

17           Sec. 7. The Director of Water Resources shall approve  
18 the application filed under section 4 of this act if he or she  
19 finds:

20           (1) That the application is complete and accompanied by  
21 the written consent and resolution required by section 3 of this  
22 act;

23           (2) That the lessee's proposed use of the water is a  
24 beneficial use;

25           (3) That exercise of the water right pursuant to the  
26 lease will not diminish the supply of water available for other  
27 holders of water rights;

28           (4) That the lease is in the public interest. In

1 assessing the public interest, the director's considerations shall  
2 include, but not be limited to, (a) the economic, social, and  
3 environmental impact of the lease when considered separately and  
4 when considered in connection with the potential use of water from  
5 other sources on the land from which the water right is to be  
6 transferred and (b) whether other sources of water are available to  
7 the proposed lessee;

8 (5) That the duration of the lease does not exceed five  
9 years, except as provided in section 11 of this act; and

10 (6) That the volume of water likely to be consumed by the  
11 lease transfer shall not be greater than the amount of water  
12 consumed where the water right is currently located.

13 Sec. 8. The director shall independently review each  
14 application filed under section 3 of this act to determine whether  
15 the public-interest requirement of section 7 of this act is met.  
16 The director's duty to independently analyze the public interest  
17 relative to each application is not altered by the presence of an  
18 adverse party in a contested-case setting.

19 Sec. 9. Any lease under the Water Rights Leasing Act is  
20 contingent upon the approval of the director, and the director may  
21 impose conditions upon such approval to ensure consistency with  
22 section 7 of this act. The leased water right shall retain its  
23 original priority date and shall revert to the district for the  
24 original use upon expiration of the lease.

25 Sec. 10. A water right leased pursuant to the Water  
26 Rights Leasing Act shall not be subject to cancellation if the  
27 irrigation district or the lessee makes beneficial use of the water  
28 at least once during the period of the lease. The provisions of

1 subsection (3) of section 46-229.04 shall apply to excuse nonuse of  
2 a water right leased pursuant to the act.

3           Sec. 11. At the end of the lease term of a leased water  
4 right, the irrigation district may apply for an extension of the  
5 lease and the director may approve the application upon review and  
6 determination that the lease remains consistent with section 7 of  
7 this act. For purposes of sections 4 to 8 of this act, such  
8 request for extension shall be treated the same as an application  
9 for approval of a new lease. Any extension may not exceed five  
10 years in duration.

11           Sec. 12. Neither the lease of a water right pursuant to  
12 the Water Rights Leasing Act nor any resulting land use changes on  
13 the land from which the water right is transferred shall result,  
14 solely by reason of such lease or land use changes, in a reduced  
15 valuation or change in classification of the real property from  
16 which such water right was transferred for purposes of assessment  
17 under sections 77-1343 to 77-1365.

18           Sec. 13. The Director of Water Resources shall adopt and  
19 promulgate rules and regulations to carry out the Water Rights  
20 Leasing Act.

21           Sec. 14. Section 46-122, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           46-122. It is hereby expressly provided that all water  
24 distributed for irrigation purposes shall attach to and follow the  
25 tract of land to which it is applied unless a change of location  
26 has been approved by the board of directors pursuant to sections  
27 46-2,127 to 46-2,129 or by the Department of Water Resources  
28 pursuant to the Water Rights Leasing Act, section 46-294, or

1 sections 46-2,122 to 46-2,126.

2           The board of directors may by the adoption of appropriate  
3 bylaws provide for the suspension of water delivery to any land in  
4 such district upon which the irrigation taxes levied and assessed  
5 thereon ~~shall~~ remain due and unpaid for two years. It shall be the  
6 duty of the directors to make all necessary arrangements for  
7 right-of-way for laterals from the main canal to each tract of land  
8 subject to assessment, and when necessary the board shall exercise  
9 its right of eminent domain to procure right-of-way for the  
10 laterals and shall make such rules in regard to the payment for  
11 such right-of-way as may be just and equitable.

12           Sec. 15. Section 46-229, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           46-229. All appropriations for water must be for some  
15 beneficial or useful purpose and, except as provided in sections  
16 46-290 to 46-294 and 46-2,122 to 46-2,125 and section 10 of this  
17 act, when the appropriator or his or her successor in interest  
18 ceases to use it for such purpose for more than three consecutive  
19 years, the right may be terminated only by the Director of Water  
20 Resources following a hearing pursuant to sections 46-229.02 to  
21 46-229.05.

22           Sec. 16. Original sections 46-122 and 46-229, Reissue  
23 Revised Statutes of Nebraska, are repealed.